



IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

DEBRA GILES, *et. al.* PLAINTIFFS/COUNTER-DEFENDANTS
v. CIVIL ACTION NO. 4:02cv517TSL-AGN
AMERICAN GENERAL FINANCE, INC., *et. al.* DEFENDANTS/COUNTER-PLAINTIFFS

**FINAL JUDGMENT OF DISMISSAL WITH
PREJUDICE AS TO FEWER THAN ALL THE PARTIES
AND ORDER OF DISMISSAL WITHOUT PREJUDICE AS
TO COUNTERCLAIM AND ARBITRATION CLAUSE PLAINTIFFS**

CAME BEFORE THE COURT Defendants/Counter-Plaintiffs American General Financial Services, Inc. ("AGFS"), formerly known as American General Finance, Inc., a Delaware corporation ("AGFI-DE"), Merit Life Insurance Company ("Merit"), and Yosemite Insurance Company ("Yosemite") (collectively "Defendants") "Dispositive Motion: (1) to Dismiss All Nonarbitration Clause Plaintiffs' Claims With Prejudice as Sanction for Violation of Court's Third Order Compelling Discovery Responses; (2) for Entry of Default Judgment; and (3) for Related Relief (With Verified Good Faith Certificate)" ("Sanctions Motion"). (06/02/05 Defs. Sanctions Mtn., docket 125.) Also before the Court is Defendants/Counter-Plaintiffs' *ore tenus* motion for dismissal without prejudice of Defendants' counterclaim.

The Sanctions Motion was originally directed at the 73 then-remaining nonarbitration clause Plaintiffs¹ and the 20 Counter-Defendant Only Parties.² Subsequently, other

¹ This Court's August 23, 2004 Order stayed the claims of the 25 Plaintiffs herein who have arbitration agreements, pending arbitration. Those Plaintiffs are: Alvin Blakeney; Michael Brown; Michael Brown; Henrietta Brown; Kevin Chapman; James Edmon; Shirley Evans; Jeanette Garrett; Samuel Grant; Rosie Grant; Ronald Hale; Rosie Hamilton; Christine Harris; Peggy Herrington; Alex Harrington; Deborah House-Leland; Frank Jones; Lamar McGowan; Tammy McGowan; Nannie Newsome; Elaine Peoples; Malcolm Smoot; Alicia Smoot; Clarence Thompson; and Dennis Windham (collectively "Arbitration Clause Plaintiffs"). (08/23/04 Order, docket no. 60.)

Nonarbitration Clause Plaintiffs voluntarily dismissed their claims, see (08/19/05 Mem. Op. & Order, docket no. 132)(detailing which Plaintiffs remain in which capacities), leaving 58 remaining nonarbitration clause Plaintiffs, who are: Brenda Brown; John Buxton; Doris Buxton; Don Carmichael; James Carmichael; Helen Cooley; Kenneth Cooley; Angela Davis; Eugene Dean; Eugene Dean, Jr.; Pamela Dean; Ronda Deloach; Merlean Esters; Jeanette Garrett; Deborah Giles; Jonita Green; Birdie Hall; Elijah Hamilton; Alexander Henderson; Ora Holden; Marcus House; Sylvia Hunter; Sheila Husband; Minnie Johnson; Gweneva Kelly; Dasie King; Jim King; Jearldyne King; Liza Lymon; Richard Lymon; Matthew McCullum; Benita McDonald; Brian Miller; Donnie Moore; Lora Moore; Ruth Moore; J.C. Musgrove; Lafayette Nelson; Antonio Newell; Felicia Patterson; James Patterson; Demmie Rhodes; Jessie Roberts; Ruby Roberts; Angelo Shelby; Vanessa Shelby; Harvey Shelby; Willie Simmons; Bettye Simmons; Shemicka Smith; Mack Smith; Robert Smith; Darlene Smith; Ruth Spears; Christine Stapleton; Dan Taylor; Inez Walden; Harry Randolph White; Patricia White; and Johnny Wilson (collectively "58 Remaining Nonarbitration Clause Plaintiffs").

In an August 19, 2005 Memorandum Opinion and Order ("Opinion"), incorporated herein by reference, this Court FOUND that the Sanctions Motion should be granted in part and denied in part. (08/19/05 Mem. Op. & Order, docket no. 132); Giles v. American General Finance, Inc., 229 F.R.D. 537 (S.D. Miss. 2005). This Court further FINDS that Defendants' *ore*

² Those Parties are Counter-Defendants: Annie Carey; Jo Diggs; Clifton Edwards; Madeline Edwards; Peggy Hale; Jacqueline Marie Harper; Glendon Herrington; Joe Diggs; A. W. Holt; Margaret Holt; Evonne Lovett; Dolly Morgan; Nellie Nathan; Ira Pigford; John Pigford; Claudia Pollard; Cecil Powe; Margaret Powe; Vencie Pruitt; Kenny Singleton; and William Seliby. (03/31/05 Order, docket no. 83.) Those Parties dismissed their claims against Defendants with prejudice, after receiving Defendants' Rule 11 motion. Thus, they remain Parties solely in their capacity as Counter-Defendants. See (03/30/05 Pls. Mtn. Dism. and 03/31/05 Order, dockets nos. 81 & 83.)

tenus motion for dismissal without prejudice of Defendants' counterclaim is well-taken and should be granted.

WHEREFORE, PREMISES CONSIDERED, it is hereby ORDERED and ADJUDGED that:

- (1) Defendants are granted FINAL JUDGMENT in their favor on the 58 Nonarbitration Clause Plaintiffs' claims against all Defendants;
- (2) All 58 Remaining Nonarbitration Clause Plaintiffs' claims against all Defendants are DISMISSED WITH PREJUDICE;
- (3) Defendants' counterclaim is DISMISSED WITHOUT PREJUDICE;
- (4) Pursuant to Fed. R. Civ. P. 54(b), the Court makes an express determination that there is no just reason for delay and upon its express direction hereby directs that this entry of Judgment as to fewer than all the Parties is FINAL as to all claims and Parties adjudicated hereby;
- (5) As all claims of the 25 Arbitration Clause Plaintiffs are permanently stayed due to their obligation to arbitrate, not litigate, their claims in the event they decide to pursue them, all those Plaintiffs' claims in this Action are DISMISSED WITHOUT PREJUDICE; however, nothing herein shall release those 25 Arbitration Clause Plaintiffs from this Court's August 23, 2004 permanent INJUNCTION, (08/23/04 Order, docket no. 60), requiring them to arbitrate their claims, should they decide to pursue them; and
- (6) This Court maintains jurisdiction over the Parties and this Action for the purpose of enforcing the Orders and Injunctions issued herein.

SO ORDERED and ADJUDGED, this the 18th day of November, 2005.


UNITED STATES DISTRICT JUDGE

SUBMITTED BY:

s/E. Barney Robinson III

E. Barney Robinson III (MSB #9432)

BUTLER, SNOW, O'MARA, STEVENS & CANNADA, PLLC

17th Floor, AmSouth Plaza

Post Office Box 22567

Jackson, Mississippi 39225-2567

(P)(601) 948-5711

(F)(601) 985-4500

(E) barney.robinson@butlersnow.com

Robert D. Gholson (MSB #4811)

BURR & FORMAN, LLP

535 North 5th Avenue

Laurel, MS 39441-6523

(T) (601) 425-0400

(F) (601) 649-0088

(E) rgholson@burr.com

ATTORNEYS FOR DEFENDANTS/COUNTER-PLAINTIFFS

Jackson 1119617v.1